

KAREN PETRO, as Administratrix of the
Estate of Mark Jackson

V.

C.A. No. 2009-213S

TOWN OF WEST WARWICK, by and through its Finance Director Malcolm A. Moore; PATRICK J. KELLEY, individually and in his representative capacity; SEAN LUKOWICZ, individually and in his representative capacity; and SCOTT THORNTON, individually and in his representative capacity

Pursuant to the Pretrial Order dated July 6, 2009, Plaintiff submits her Amended Pretrial Memorandum.

Plaintiff expects to prove that Defendants Kelley and Lukowicz unreasonably seized Plaintiff's decedent Mark Jackson and acted with excessive force in forcing him to the ground in violation of 42 U.S.C. §1983, which also constituted an assault and battery under state law. Plaintiff will prove that Defendants Kelley, Lukowicz and Thornton thereafter deprived Mark Jackson of his Fourteenth Amendment rights in that they were deliberately indifferent to Mark Jackson's need for emergency first aid including CPR in violation of 42 U.S.C. §1983, and were both negligent and grossly negligent under state law.

Plaintiff will prove that Defendants Kelley, Lukowicz and Thornton's conduct was the proximate cause of Mark Jackson's pain and suffering and death. Plaintiff will prove

that the Defendant West Warwick is liable on Plaintiff's state law claims under *respondeat superior*.

Plaintiff's expected witnesses will include:

1. Defendant Patrick Kelley: Defendant Kelley will testify concerning the events on the evening of June 27, 2009, in which he participated or observed, his own knowledge and training, and the policies and procedures of the West Warwick Police Department, and including his lay and expert opinions regarding the facts and his and the Defendants' conduct in dealing with Mark Jackson;
2. Defendant Sean Lukowicz will testify concerning the events on the evening of June 27, 2009, in which he participated or observed, his own knowledge and training, and the policies and procedures of the West Warwick Police Department, and including his lay and expert opinions regarding the facts and his and the Defendants' conduct in dealing with Mark Jackson.
3. Defendant Scott Thornton will testify concerning the events on the evening of June 27, 2009, in which he participated or observed, his own knowledge and training, and the policies and procedures of the West Warwick Police Department;
4. Peter Gillespie, M.D.: Dr. Gillespie performed the autopsy on Mark Jackson and will testify as a fact witness and as an expert in accordance with his reports in this matter concerning including but not limited to the autopsy and the cause of death of Mark Jackson;
5. Lou Reiter: Mr. Reiter will testify as a police practices expert in accordance with his report in this matter, concerning *inter alia* the conduct and obligations of Defendants Kelley, Lukowicz and Thornton on June 27, 2009;

6. Kevin Brown, M.D.: Dr. Brown will testify as an expert in emergency medicine, first aid and CPR in accordance with his reports in this matter, including but not limited to that Defendants Kelley, Lukowicz and Thornton's conduct demonstrated deliberate indifference to and was both negligent and grossly negligent and was the proximate cause of Mark Jackson's pain and suffering and death;

7. Deborah Pinal, M.D.: Dr. Pinal will testify as an expert in psychiatry and police interactions with the mentally ill, in accordance with her report in this matter, including but not limited to that Mr. Jackson did not experience excited delirium and that the police interaction with him was improper;

8. Al Peterson: Mr. Peterson will testify as an expert in emergency first aid and CPR in accordance with his report in this matter, including but not limited to that Defendants Kelley, Lukowicz and Thornton treated Mark Jackson with deliberate indifference and were both negligent and grossly negligent;

9. Lt. James Croft of the West Warwick Police Department: Lieutenant Croft will testify concerning his actions and observations on the night of June 27, 2009 when he responded to attend to Mark Jackson. Lt. Croft will also testify as an expert on CPR;

10. Major Richard Silva: Major Richard Silva of the West Warwick Police Department will testify as an adverse witness and expert witness to articulate the relevant policies and procedures of the West Warwick Police Department and concerning whether Defendants Lukowicz and Kelley had a reasonable basis to suspect that Mark Jackson had committed, was committing, or was about to commit a crime during their encounter;

11. Patrolman Michael Nye: Patrolman Michael Nye of the West Warwick Police Department will testify as a fact and expert witness concerning the encounter with Mark Jackson at Joyal's and the station's parking lots, the policies and procedures of the West Warwick Police Department; the training provided by the Municipal Police Training Academy concerning CPR and sudden death in custody, and the responsibilities of the arresting officer (Defendant Kelley), the transporting officer (Defendant Lukowicz), and the Officer-in-Command (Defendant Thornton);

12. Rachel Pinada: Rachel Pinada is a dispatcher for the West Warwick Police Department. She will testify concerning the radio, video and phone transmissions concerning Mark Jackson on the night of June 27, 2009 and the dispatch of officers to Joyal's Liquors;

13. Patrolman Marcus Palozzo: Patrolman Palozzo will testify concerning the encounter with Mark Jackson on the night of June 27, 2009, the policies and procedures of the West Warwick Police Department, and the responsibilities of the arresting and transporting officers and the Officer-in-Command;

14. Patrolman Thomas Nye: Patrolman Nye will testify concerning the encounter with Mark Jackson on the night of June 27, 2009, his experience and training, and the policies and procedures of the West Warwick Police Department;

15. Private Christopher Cahoon: Private Cahoon of the West Warwick Fire Department will testify concerning the dispatches for Mark Jackson and his actions and observations. Private Cahoon will also testify as an expert on CPR;

16. Michael Simko: Mr. Simko is a dispatcher for the West Warwick Fire Department and will testify concerning the calls he received and made regarding Mark Jackson;

17. Caption David A. Ricciarelli: Captain David A. Ricciarelli of the Rhode Island Municipal Police Training Academy will testify concerning the training received by Officers Kelley, Lukowicz, Palozzo, Michael Nye and Thomas Nye at the Academy;

18. Juanita Jackson: Mrs. Jackson will testify concerning Mark Jackson's actions on June 27, 2009, his routine activities, his peaceable nature, and his prior history of peaceful and law-abiding behavior;

19. Karen Petro: Ms. Petro will testify concerning Mark Jackson's routine activities, his peaceable nature and his prior history of peaceful and law-abiding behavior;

20. John Lombardi: Mr. Lombardi will testify concerning Mark Jackson's routine activities, his peaceable nature and his prior history of peaceful and law-abiding behavior;

21. Kimberly Morrison or another employee from Sparrow's Point: Ms. Morrison will testify concerning Mark Jackson's routine activities, his peaceable nature and his prior history of peaceful and law-abiding behavior;

22. Paul Joyal: Mr. Joyal will testify concerning the parking lots at Joyal's Liquors and his contacts with Mr. Jackson;

23. Patricia Rajotte will testify concerning the parking lots at Joyal's Liquors and her contacts with Mr. Jackson; and

24. Richard Kelly: Mr. Kelly will testify concerning the certification and program provided to Defendants Kelley, Lukowicz and Thornton in first aid, including CPR.

Plaintiff identifies these potential witnesses without prejudice and reserving the right to supplement this list with additional witnesses. Plaintiff reserves the right to call the witnesses identified by Defendants.

B. Supporting Law

Plaintiff refers to the extensive briefing of legal issues in connection with pretrial motions.

C. List of Exhibits

Plaintiff's expected exhibits will be:

1. Statement of Sean Lukowicz to the Rhode Island State Police on June 28, 2008;
2. Statement of Patrick Kelley to the Rhode Island State Police on June 28, 2008;
3. Statement of Scott Thornton to the Rhode Island State Police on June 28, 2008;
4. Selected West Warwick Police Department Rules and Regulations and General Orders:
 - a. Preamble;
 - b. Article II: Mission Statement;
 - c. Article VIII: Special Orders, General Orders, Directives;
 - d. Job Description: Major, Police-Detective Division Commander;
 - e. General Order #97-24, Prisoner Policy;
 - f. General Order #300-04, Oleoresin Capsicum (O.C.) Spray;
 - g. General Order #320.07, Automatic External Defibrillation;
 - h. General Order #320.08, Standard Operating Procedure for Arrests;
5. Autopsy report with attachments;

6. Post-mortem photographs (external exam depicting cuts and bruises):
 - a. 08-02691 (2);
 - b. 08-02691 (13);
 - c. 08-02691 (18);
 - d. 08-02691 (19);
 - e. 08-02691 (22);
 - f. 08-02691 (23);
 - g. 08-02691 (26);
 - h. 08-02691 (27);
 - i. 08-02691 (28);
 - j. 08-02691 (32);
7. Medical and Psychiatric Records for Mark Jackson:
 - a. Kent County Mental Health Center report dated September 29, 1993;
 - b. Disability report dated November 30, 1993;
 - c. Leo Cok, M.D., Initial Psychiatric Evaluation dated December 16, 1993;
 - d. Activities of Daily Living Report dated January 28, 1994;
 - e. Report of Continuing Disability Interview dated April 10, 1997;
 - f. Report of Activities, Interests and Relationships dated June 11, 1997;
 - g. Bruno Franek, M.D., report dated June 11, 1997;
 - h. Activities of Daily Living Report dated March 18, 2000;
 - i. Report of Continuing Disability Interview dated May 8, 2000;
 - j. Frederick Evans, M.D., report dated July 25, 2000;
 - k. Report of Continuing Disability Interview dated June 9, 2004;
 - l. Function Report-Adult, dated October 28, 2004;
 - m. William C. LaFrance, M.D., report dated December 1, 2004;

8. Selected audio recordings of 911 calls and communications between dispatchers and police;
9. Stipulation dated July 27, 2010 regarding no damage to sign;
10. Photographs taken by State Police of parking lot (front and back):
 - a. RISP #36;
 - b. RISP #38;
 - c. RISP #39;
 - d. RISP #40;
 - e. RISP #43;
 - f. RISP #46;
 - g. RISP #47;
 - h. RISP #57;
 - i. RISP #65;
 - j. RISP #69;
 - k. RISP #71;
 - l. RISP #74;
 - m. RISP #75;
 - n. RISP #76;
 - o. RISP #79;
 - p. wallet contents;
 - q. blow-up of high school diploma from (p)
11. Additional photographs
12. Video of Mark Jackson in West Warwick Police Department parking lot (with timer);
13. CPR card for Sean Lukowicz;
14. CPR card for Scott Thornton;
15. Article "Preparing for 'Sudden Death'" by M.A. Brave, et al. (1994);
16. Training materials "Suicidal Subjects/Mentally Ill Persons;"
17. Stipulation dated July 27, 2010 regarding no arrest record and video of back lot;
18. Document prepared by Department of Attorney General dated June 28, 2010 re: no arrest record;
19. DVD BLS for Healthcare Providers and Renewal Course 2/06.

Plaintiff submits this list without prejudice and reserving the right to supplement this list with additional exhibits. Plaintiff also reserves the right to offer the exhibits identified by Defendants.

D. Anticipated Motions *in Limine*

None.

E. Proposed Jury Instructions and Special Interrogatories

To be filed separately.

F. Estimated Length of Trial

Plaintiff estimates that submission of her case will take one trial week.

Plaintiff, Karen Petro,
By her Attorney,

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Dated: October 17, 2011

CERTIFICATION

I hereby certify that an exact copy of the within document was electronically mailed to the Electronic Case Filing system of the United States District Court for its distribution to all counsel of record on this 17th day of October, 2011 to the following:

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